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10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

13 IN RE: COUNTRYWIDE FINANCIAL } MDL No. 11-ML-02265-MRP (MANx)  
14 CORP. MORTGAGE-BACKED }  
SECURITIES LITIGATION }  
15 } DEFENDANT ANGELO MOZILO'S  
16 } MEMORANDUM OF POINTS AND  
17 } AUTHORITIES IN SUPPORT OF  
18 } CONSOLIDATED MOTION TO  
19 } DISMISS PLAINTIFFS'  
COMPLAINTS }  
Hr'g: February 13, 2012 at 11:00 a.m.  
February 14, 2012 at 1:00 p.m.  
Judge: Hon. Mariana R. Pfaelzer  
Ctrm: 12

20 AMERICAN FIDELITY ASSURANCE }  
COMPANY, }  
21 Plaintiff, }  
22 vs. }  
23 COUNTRYWIDE FINANCIAL }  
CORPORATION, *et al.*, }  
24 Defendants. }

25 Case No. 11-CV-07167-MRP (MANx)

1 NATIONAL INTEGRITY LIFE  
2 INSURANCE COMPANY,

3 Plaintiff,

4 vs.

5 COUNTRYWIDE FINANCIAL  
6 CORPORATION, *et al.*,

7 Defendants.

Case No. 11-CV-09889-MRP (MANx)

8 PUTNAM BANK, individually and on  
9 behalf of all others similarly situated,

10 Plaintiff,

11 vs.

12 COUNTRYWIDE FINANCIAL  
13 CORPORATION, *et al.*,

14 Defendants.

Case No. 11-CV-04698-MRP (MANx)

15 SEALINK FUNDING LIMITED,

16 Plaintiff,

17 vs.

18 COUNTRYWIDE FINANCIAL  
19 CORPORATION, *et al.*,

20 Defendants.

Case No. 11-CV-08896-MRP (MANx)

21 THE WESTERN AND SOUTHERN  
22 LIFE INSURANCE COMPANY, *et al.*,

23 Plaintiffs,

24 vs.

25 COUNTRYWIDE FINANCIAL  
26 CORPORATION, *et al.*,

27 Defendants.

Case No. 11-CV-07166-MRP (MANx)

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## I. INTRODUCTION<sup>1</sup>

2 These five cases, brought by sophisticated institutional purchasers of  
3 Countrywide mortgage-backed securities (“MBS”), are nearly identical to three  
4 others that this Court dismissed as to Defendant Angelo Mozilo: *Stichting*  
5 *Pensioenfonds ABP v. Countrywide Financial Corporation*, --- F. Supp. 2d ----,  
6 No. 10-cv-07275-MRP (MANx), 2011 WL 3558173 (C.D. Cal. Aug. 9, 2011);  
7 *Allstate Insurance Company v. Countrywide Financial Corporation*, --- F. Supp. 2d  
8 ----, No. 11-cv-05236-MRP (MANx), 2011 WL 5067128 (C.D. Cal. Oct. 21, 2011);  
9 and *United Financial Casualty Co. v. Countrywide Financial Corporation*,  
10 No. 11-cv-04766-MRP (MANx), slip op. (C.D. Cal. Nov. 16, 2011)  
11 (“*Progressive*”), Def. Mozilo’s Request for Judicial Notice (“RJN”) ¶ 1, Ex. 1. In  
12 *Stichting*, *Allstate*, and *Progressive*, the Court found that claims against Mr. Mozilo  
13 were time-barred, and there is no reason for a different result here.

14 The limitations period for the federal and the state law securities claims  
15 against Mr. Mozilo is one or two years from the date of discovery. The civil  
16 conspiracy claims against Mr. Mozilo are also subject to a two-year limitations  
17 period, which runs from discovery, as is the aiding and abetting fraud claim in  
18 *American Fidelity*. Faced with these same and similar statutes of limitations, this  
19 Court found that the allegations against Mr. Mozilo in *Stichting, Allstate*, and  
20 *Progressive* – the same allegations as advanced in this case – were time-barred as a

1 Mr. Mozilo brings this consolidated motion to dismiss: (1) the Amended  
2 Complaint in *American Fidelity Assurance Co. v. Countrywide Financial Corp.*,  
3 No. 11-cv-07167 MRP (MANx) (C.D. Cal. Apr. 11, 2011); (2) the Complaint in  
4 *National Integrity Life Insurance Co. v. Countrywide Financial Corp.*,  
5 No. 11-cv-09889 MRP (MANx) (C.D. Cal. Nov. 9, 2011); (3) the Complaint in  
6 *Putnam Bank v. Countrywide Financial Corp.*, No. 11-cv-04698 MRP (MANx)  
7 (C.D. Cal. Jan. 27, 2011); (4) the Complaint in *Sealink Funding Ltd. v. Countrywide*  
8 *Financial Corp.*, No. 11-cv-08898 MRP (MANx) (C.D. Cal. Sept. 29, 2011); and  
9 (5) the Amended Complaint in *The Western and Southern Life Insurance Co. v.*  
10 *Countrywide Financial Corp.*, No. 11-cv-07166 MRP (MANx) (C.D. Cal. April 27,  
11 2011) (collectively, the plaintiffs and operative complaints in the aforementioned  
12 cases are referred to herein as the “Plaintiffs” and the “Complaints,” respectively).  
13 Mr. Mozilo also joins in and incorporates by reference, to the extent applicable to  
14 the claims against him, the other defendants’ motions to dismiss.

1 matter of law. *Stichting*, 2011 WL 3558173, at \*13; *Allstate*, 2011 WL 5067128, at  
2 \*13; *Progressive*, slip op. at 3. In fact, the Complaints here are even more stale; all  
3 of them were filed *after* the complaints in *Allstate*, and all but one were filed after  
4 the First Amended Complaint (“FAC”) in *Stichting*.

5 The lone negligent misrepresentation claim against Mr. Mozilo in *Sealink* is  
6 subject to a three-year limitations period, which runs from the date of the alleged  
7 misstatement on which the plaintiff relied. Because all of *Sealink*'s MBS purchases  
8 were made more than three years before the complaint was filed, the negligent  
9 misrepresentation claim against Mr. Mozilo is time-barred as a matter of law.

10 As in *Stichting*, *Allstate*, and *Progressive*, the Complaints demonstrate on  
11 their face that Plaintiffs discovered, or reasonably could have discovered, their  
12 alleged claims against Mr. Mozilo years ago. The alleged misconduct is the same  
13 conduct alleged in a nearly-identical MBS class action filed more than three years  
14 before the Complaints at issue here. Mr. Mozilo was not named in that class action  
15 and that fact alone precludes any argument that Plaintiffs' claims could relate back  
16 as to him to the earlier-filed class case. Moreover, the Complaints repeatedly crib  
17 from prior shareholder, regulatory, and other complaints against Countrywide and  
18 Mr. Mozilo, each of which also was filed long ago, further establishing that these  
19 cases are time-barred as to Mr. Mozilo. *See, e.g.*, *American Fidelity* Am. Compl. ¶ 213  
20 (citing Countrywide shareholder class action as supposed proof of alleged  
21 abandonment of underwriting guidelines); *Sealink* Compl. ¶ 93 (same).

22 In addition, the state law claims against Mr. Mozilo in *American Fidelity* and  
23 *Western & Southern* fail for lack of personal jurisdiction. *American Fidelity* and  
24 *Western & Southern* were originally brought in Oklahoma and Ohio, then  
25 transferred to this Court as part of the Countywide MBS multi-district litigation  
26 (“MDL”). When a case is transferred to an MDL, personal jurisdiction is analyzed  
27 from the perspective of the transferor court, meaning that if Oklahoma and Ohio  
28 lack personal jurisdiction over Mr. Mozilo, the cases must be dismissed. Moreover,

1 because the federal claims are untimely as a matter of law, the nationwide service of  
2 process provisions in the federal securities acts cannot be used as the basis for  
3 personal jurisdiction over Mr. Mozilo. Plaintiffs must proffer an independent  
4 jurisdictional basis for any remaining state law claims. Because Mr. Mozilo had no  
5 contact with Oklahoma or Ohio, Plaintiffs cannot make this showing.

6 **II. BACKGROUND AND ALLEGATIONS AS TO MR. MOZILO**

7 ***The Claims against Mr. Mozilo.*** Mr. Mozilo faces the following claims:

8 (1) Section 15 under the Securities Act of 1933 (the “Securities Act”) – in *American*  
9 *Fidelity*; (2) Section 20(a) under the Securities Exchange Act of 1934 (the  
10 “Exchange Act”) – in *National Integrity, Putnam, and Western & Southern*;  
11 (3) Connecticut Uniform Securities Act – in *Putnam*; (4) Ohio Securities Act – in  
12 *National Integrity and Western & Southern*; (5) Ohio Corrupt Activities Act – in  
13 *National Integrity and Western & Southern*; (6) Aiding and Abetting Fraud – in  
14 *American Fidelity and Sealink*; (7) Negligent Misrepresentation – in *Sealink*; and  
15 (8) Civil Conspiracy – in *National Integrity and Western & Southern*.

16 For the convenience of the Court, attached hereto as Appendix A is a chart of  
17 the claims against Mr. Mozilo, the limitations period, and a citation to the governing  
18 statute/case law providing that limitation period.

19 ***The Securitizations.*** All the claims here rest upon alleged misstatements in  
20 MBS offering documents. *See, e.g., Am. Fidelity Am. Compl.* ¶¶ 1, 4, 41-42, 72-93,  
21 253-56, 403, 460-62, 464-65; *National Integrity Compl.* ¶¶ 1, 76-80, 84, 205-07,  
22 241-44, 257-58, 260-62, 283-86, 400, 405, 409, 452; *Putnam Compl.* ¶¶ 1-2, 5,  
23 10-11, 36, 44, 53, 55-82, 97-100, 172-73; *Sealink Compl.* ¶¶ 1-2, 52-64, 82, 95-96,  
24 98-118, 129, 139, 150, 161-64, 166; *Western & Southern Am. Compl.* ¶¶ 1, 76-80,  
25 84, 205-07, 241-44, 257-58, 260-62, 283-86, 400, 405, 409, 452. The MBS  
26 securitizations at issue are alleged to have taken place between 2005 and March 25,  
27 2008. *See Am. Fidelity Am. Compl.* ¶ 5; *National Integrity Compl.* ¶ 75; *Putnam*  
28 *Compl.* ¶¶ 2, 11; *Sealink Compl.* ¶ 2; *Western & Southern Am. Compl.* ¶ 75.

1       **The Class Action.** On November 14, 2007, a class action attacking hundreds  
2 of Countrywide MBS securitizations was filed in California state court. *Luther v.*  
3 *Countrywide Home Loans Servicing LP*, No. BC380698 (Cal. Super. Ct. Nov. 14,  
4 2007). On June 12, 2008, another class action added more securitizations. *Wash.*  
5 *State Plumbing & Pipefitting Pension Trust v. Countrywide Fin. Corp.*,  
6 No. BC392571 (Cal. Super. Ct. June 12, 2008). These actions were consolidated in  
7 2008 and ultimately re-filed in January 2010 before this Court. *Me. State Ret.*  
8 Sys. v. *Countrywide Fin. Corp.*, No. 10-cv-00302-MRP (MANx) (C.D. Cal. Jan. 14,  
9 2010). Nearly every MBS deal at issue here was also at issue in the class action.  
10 *Compare Am. Fidelity Am. Compl.* ¶ 32, *National Integrity Compl.* ¶¶ 75, 394,  
11 Ex. A, *Putnam Compl.* ¶ 15, *Sealink Compl.* ¶ 33, and *Western & Southern Am.*  
12 Compl. ¶¶ 75, 394, Ex. A with *Me. State Compl.* ¶ 47, RJN ¶ 2, Ex. 2 at 22-52.

13       **However, Mr. Mozilo was never a party to the class action. See Putnam**  
14 *Compl.* ¶ 117 (“Except for the Bank of America Defendants, Mozilo, and  
15 Countrywide Capital Markets, each Defendant in this Complaint was also a  
16 defendant in the *Luther* or *Washington State Plumbing* class actions.”). He appeared  
17 as a defendant for the first time when Plaintiffs filed their respective Complaints in  
18 these actions, the earliest on January 27, 2011 and latest on November 9, 2011. This  
19 Court will recall that the complaint in *Allstate* and the amended complaint in  
20 *Stichting* were filed on December 27, 2010 and February 14, 2011, respectively –  
21 making the Complaints here even more stale.

22       **III. ALL OF PLAINTIFFS’ FEDERAL SECURITIES CLAIMS ARE**  
23       **TIME-BARRED AS TO MR. MOZILO**

24       Mr. Mozilo faces control person claims under Section 15 of the Securities Act  
25 in *American Fidelity* and Section 20(a) of the Exchange Act in *National Integrity*,  
26 *Putnam*, and *Western & Southern*.<sup>2</sup> Claims under the Securities Act must be

27       <sup>2</sup> Although Mr. Mozilo faced a Section 20(a) claim in American Fidelity’s  
28 original complaint, the Section 20(a) claim against him has been dropped from the  
amended complaint. *Am. Fidelity Am. Compl.* ¶ 402.

1 brought within “one year after the discovery of the untrue statement or the  
2 omission.” 15 U.S.C. § 77m. Claims under the Exchange Act must be brought  
3 within two years “after the discovery of the facts constituting the violation.” 28  
4 U.S.C. § 1658(b)(1).

5 The limitations period under the Securities Act runs from discovery of the  
6 alleged misstatement “or after such discovery should have been made by the  
7 exercise of reasonable diligence.” 15 U.S.C. § 77m. Similarly, under the Exchange  
8 Act, “discovery . . . encompasses not only those facts the plaintiff actually knew, but  
9 also those facts a reasonably diligent plaintiff would have known.” *Merck & Co. v.*  
10 *Reynolds*, 130 S. Ct. 1784, 1796 (2010) (internal quotations omitted); *Stichting*,  
11 2011 WL 3558173, at \*6; *Allstate*, 2011 WL 5067128, at \*11. Thus, the limitations  
12 period begins to run when the plaintiff discovers or reasonably could have  
13 discovered the facts constituting the violation – whichever comes first. *Merck*, 130  
14 S. Ct. at 1794-95; *Stichting*, 2011 WL 3558173, at \*6; *Allstate*, 2011 WL 5067128,  
15 at \*11. Under this standard, the statute begins to run (at the latest) when the facts  
16 constituting the violation are publicly disclosed, including through other lawsuits.  
17 *In re Wells Fargo Mortgage-Backed Certificates Litig.*, No. 09-CV-01376-LHK,  
18 2010 WL 4117477, at \*6-7 (N.D. Cal. Oct. 19, 2010) (dismissing lawsuit as stale  
19 because its claims overlapped with a prior lawsuit concerning the same MBS  
20 offerings with the same registration statements and prospectuses); *Stichting*, 2011  
21 WL 3558173, at \*8, 10-11; *Allstate*, 2011 WL 5067128, at \*11; *Me. State Ret. Sys.*  
22 v. *Countrywide Fin. Corp.*, 722 F. Supp. 2d 1157, 1165 (C.D. Cal. 2010).

23 A. Prior Complaints, Including the Nearly Identical MBS Class Action,  
24 Triggered Discovery as a Matter of Law

25 Here, the Complaints demonstrate on their face that the federal securities  
26 claims against Mr. Mozilo are time-barred. The allegations in the Complaints are  
27 substantively identical to the *Stichting*, *Allstate*, and *Progressive* complaints that this  
28 Court already found to be time-barred. As the Court found in *Stichting*, *Allstate*,

1 and *Progressive*, other complaints and press reports made clear that a reasonable  
2 investor exercising reasonable diligence would have discovered facts sufficient to  
3 state every element of the plaintiffs' federal securities claims (including scienter) by  
4 late 2007. *Stichting*, 2011 WL 3558173, at \*8-13; *see also Allstate*, 2011 WL  
5 5067128, at \*11; *Progressive*, slip. op. at 3. This finding dooms Plaintiffs' claims  
6 here because the Complaints were not filed until 2011, more than three years after  
7 the applicable one- and two-year limitations periods began to run.

As in *Stichting*, *Allstate*, and *Progressive*, the gravamen of the Complaints is that “Countrywide knowingly and systematically abandoned its underwriting practices.” *Compare Stichting*, 2011 WL 3558173, at \*7, *Allstate*, 2011 WL 5067128, at \*11, and *Progressive*, slip. op. at 3 with Appendix B hereto. As this Court has previously held, abandoned underwriting allegations against Countrywide and Mr. Mozilo are not new, having been made by other plaintiffs since 2007. *Stichting*, 2011 WL 3558173, at \*8-9 (“Here, the gravamen of Plaintiff’s claim is that Countrywide wholly abandoned its underwriting standards. The press and numerous widely reported lawsuits had made exactly this allegation by the end of 2007.”); *Allstate*, 2011 WL 5067128, at \*11; *Progressive*, slip. op. at 3.<sup>3</sup> For example, as this Court has recognized, the MBS class action (which was filed on November 14, 2007 and in which Plaintiffs were putative class members) alleged the “the same abandonment of underwriting standards and misrepresentations.” *Stichting*, 2011 WL 3558173, at \*8; see also *Luther v. Countrywide Home Loans Servicing LP*, No. BC380698 (Cal. Super. Ct. Nov. 14, 2007).<sup>4</sup>

<sup>3</sup> See also, e.g., *Ark. Teacher Ret. Sys., Fire & Police Pension Ass'n of Colo. v. Mozilo*, No. 07-cv-06923-MRP (MANx) (C.D. Cal. Oct. 24, 2007); *Argent Classic Convertible Arbitrage Fund L.P. v. Countrywide Fin. Corp.*, No. 07-CV-07097-MRP (MANx) (C.D. Cal. Oct. 30, 2007); *New York City Employees' Ret. Sys. v. Countrywide Fin. Corp.*, No. 08-cv-00492-ODW (C.D. Cal. Jan. 25, 2008); *In re Countrywide Fin. Corp. Deriv. Litig.*, No. 07-CV-06923-MRP (MANx) (C.D. Cal. Feb. 15, 2008); *In re Countrywide Fin. Corp. Sec. Litig.*, No. 07-CV-05295-MRP (MANx) (C.D. Cal. Apr. 11, 2008).

<sup>4</sup> Relying on *Luther*, Plaintiffs claim the benefit of class action tolling under *American Pipe & Construction Co. v. Utah*, 414 U.S. 528 (1974). See *Am. Fidelity*

1       The Complaints themselves concede that Plaintiffs' allegations are not new:  
2 "Defendants' activities as a buyer, financer and securitizer of residential mortgage  
3 loans have been the focus of numerous government investigations and prosecutions  
4 as well as private investor lawsuits." *Sealink* Compl. ¶ 34; *see also Am. Fidelity*  
5 Am. Compl. ¶ 198 ("Countrywide's unlawful conduct ha[s] prompted a substantial  
6 number of public and private inquiries, investigations and actions."); *National*  
7 *Integrity* Compl. ¶¶ 13-14; *Western & Southern* Am. Compl. ¶¶ 13-14. Indeed,  
8 Plaintiffs cite many of these complaints as purported evidence of their claims. *See,*  
9 *e.g.*, *Am. Fidelity* Am. Compl. ¶¶ 59, 100-03, 154-157, 159, 161-62, 167, 174-76,  
10 178-79, 183, 204-06, 208-10, 213, 237-39; *National Integrity* Compl. ¶¶ 107-111,  
11 163, 247-49, 253-54; *Sealink* Compl. ¶¶ 6, 82, 84-85, 92-93; *Western & Southern*  
12 Am. Compl. ¶¶ 107-111, 163, 247-49, 253-54.

13       By copycatting allegations made long ago in shareholder, regulatory, and  
14 other actions against Countrywide and Mr. Mozilo, the Complaints demonstrate on  
15 their face that the claims against Mr. Mozilo are time-barred as a matter of law.<sup>5</sup>  
16

17 Am. Compl. ¶¶ 380-90, 444, 456; *National Integrity* Compl. ¶¶ 389-98; *Putnam*  
18 Compl. ¶¶ 105-16; *Western & Southern* Am. Compl. ¶¶ 389-98. However, in  
19 addition to the reasons tolling does not apply to all defendants, tolling cannot apply  
20 to Mr. Mozilo because he was not a defendant in the MBS class action. *See Arneil v. Ramsey*,  
21 550 F.2d 774, 782 n.10 (2d Cir. 1977), overruled on other grounds by *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 348 50 (1983);  
*Footbridge Ltd. Trust v. Countywide Fin. Corp.*, 770 F. Supp. 2d 618, 624 n.1  
(S.D.N.Y. 2011).

22       <sup>5</sup> The Section 15 and Section 20(a) control person claims against Mr. Mozilo  
23 should be dismissed for the additional reason that Plaintiffs cannot plead valid and  
timely predicate violations under the Securities Act or the Exchange Act. *Stichting*,  
24 2011 WL 3558173, at \*11; *Allstate*, 2011 WL 5067128, at \*13. In addition, the  
Section 15 claim is so stale as to Mr. Mozilo that it is barred by the Securities Act's  
three-year statute of repose. 15 U.S.C. § 77m; *Am. Fidelity* Am. Compl. ¶ 5  
(alleging most recent MBS purchase took place in November 2007); *see also*  
25 *Countrywide* Defs' Mem. ISO Mot. to Dismiss ("Countrywide Defs' Mem.")  
Part III.A. Likewise, the Section 20(a) claims with respect to many of the MBS  
securitizations are also barred by the Exchange Act's five-year statute of repose. 28  
U.S.C. § 1658(b)(2); *National Integrity* Compl. ¶¶ 75, Ex. A (alleging ten MBS  
purchases took place more than five years ago); *Western & Southern* Am. Compl.  
¶¶ 75, Ex. A (alleging thirty-eight MBS purchases took place more than five years  
ago); *see also* *Countrywide* Defs' Mem. Parts IV.B & V.B.2.

1       B.     The SEC Complaint Cannot Revive Plaintiffs' Time-Barred Claims

2       Certain Plaintiffs suggest that their claims are timely because they could not  
3 have discovered scienter or certain documents and deposition testimony until the  
4 SEC complaint was filed on June 4, 2009. *See Am. Fidelity Am. Compl.* ¶¶ 104,  
5 *National Integrity Compl.* ¶¶ 85, 385; *Putnam Compl.* ¶¶ 86, 118; *Western &*  
6 *Southern Am. Compl.* ¶¶ 85, 385. However, this Court already rejected this very  
7 argument in *Stichting*:

8       Plaintiff's reliance on semantic distinctions and supposedly new  
9 revelations in the SEC complaint is not persuasive. The SEC complaint  
10 may perhaps include more detail than earlier-filed complaints, but it  
11 does not contain any fundamentally new revelation. All the facts  
12 alleged had been widely reported already[.]

13 *Stichting*, 2011 WL 3558173, at \*11.<sup>6</sup> "Other plaintiffs recognized that such facts  
14 were available by 2007, and this Court subsequently held that those plaintiffs had  
15 pleaded scienter adequately." *Id.*; *see also In re Countrywide Fin. Corp. Sec. Litig.*,  
16 588 F. Supp. 2d 1132 (C.D. Cal. 2008); *In re Countrywide Fin. Corp. Derivative*  
17 *Litig.*, 554 F. Supp. 2d 1044 (C.D. Cal. 2008). This Court's prior opinions on this  
18 topic find ample support in the law. *Premium Plus Partners, L.P. v. Goldman,*  
19 *Sachs & Co.*, 648 F.3d 533, 537 (7th Cir. 2011) (Easterbrook, C. J.) (noting that  
20 "[t]here's no magic in the filing date of the Commission's complaint," and that "[i]t  
21 would be silly to conclude that, because the SEC did not file its complaint until  
22 September 2003, no reasonably diligent person could have inferred *scienter*

23  
24       

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<sup>6</sup> Plaintiffs' argument is also undercut by their own allegations, which state  
25 that cases well prior to the SEC complaint addressed the very same issues. *See, e.g.*,  
26 *Am. Fidelity Am. Compl.* ¶ 252 ("Other courts have similarly found that allegations  
27 similar to those made here relating to the activities of Countrywide and its  
executives present a 'cogent and compelling inference of scienter.'") (citing this  
Court's decision in *In re Countrywide Fin. Corp. Sec. Litig.*, 588 F. Supp. 2d 1132  
(C.D. Cal. 2008)); *Western & Southern Compl.* ¶ 319 (same). Ironically, *National*  
*Integrity* (which is being prosecuted by the same counsel who represents *Western &*  
*Southern*) was filed more than two years after the SEC complaint.

1 earlier.”). Accordingly, Plaintiffs cannot rely on the filing date of the SEC  
2 complaint to rescue their belated claims.

3       C.     An Allegedly New MBS Valuation Model Cannot Revive Plaintiffs'  
4                   Time-Barred Claims

5       The supposed facts triggering discovery are an ever-moving target in these  
6 MDL cases, changing shape every time another milestone passes or another decision  
7 is rendered by this Court on the statute of limitations. After this Court’s decision in  
8 *Stichting*, the plaintiffs in *Western & Southern* requested and were granted  
9 permission to file an amended complaint. So they changed their supposed facts that  
10 triggered discovery. Whereas previously it was the SEC complaint (*Western &*  
11 *Southern* Compl. ¶¶ 4, 16, 124, 260), it has now changed to an entirely new theory.  
12 Now *Western & Southern* contends it could not have discovered its claims until a  
13 new MBS valuation model was developed in mid-to-late 2009 and it determined that  
14 its MBS were impaired. *Western & Southern* Am. Compl. ¶¶ 372-83; *see also*  
15 *National Integrity* Compl. ¶¶ 372-83.<sup>7</sup> Plaintiffs miss the mark again.<sup>8</sup>

16       Plaintiffs’ new theory is irrelevant to this Court’s prior reasoning in  
17 dismissing nearly-identical cases. As this Court already found, a reasonably diligent

18       <sup>7</sup> National Integrity was one of the plaintiffs in the original *Western &*  
19 *Southern* complaint and is represented by the same counsel. However, rather than  
20 file an amended complaint, National Integrity attempted to hedge its bets by filing a  
21 spinoff action in New York (apparently hoping to secure a longer statute of  
limits). National Integrity also had a change of heart on what triggered its  
discovery of its claims, moving from the SEC complaint to the same new theory  
Western & Southern proffers.

22       <sup>8</sup> Western & Southern and National Integrity proffer other supposed reasons  
23 why they could not have discovered their claims until recently. *See Western &*  
24 *Southern* Am. Compl. ¶ 384 (alleging no diminution in interest or principal  
payments until February 2010); ¶ 386-87 (alleging fraudulent concealment based  
on “robo-signing,” forgery, and perjury relating to foreclosures practices), ¶ 387  
(alleging fraudulent concealment based on intimidation of whistleblowers); *National*  
25 *Integrity* Compl. ¶¶ 384, 386-87. As an initial matter, under Plaintiffs’ own theory,  
alleged fraudulent concealment occurred long after Mr. Mozilo retired from  
26 Countrywide Financial Corporation (“CFC”) on July 1, 2008. *Western & Southern*  
Am. Compl. ¶ 28; *National Integrity* Compl. ¶ 28. Plaintiffs also ignore that this  
27 Court has already found that MBS investors exercising reasonable diligence would  
have discovered their claims years ago. There is no reason for a different result  
here. *See also* Countrywide Defs’ Mem. Parts IV.B, IV.C, V.B.2 & V.B.3.

1 MBS investor would have discovered facts giving rise to their alleged claims years  
2 ago. *Stichting*, 2011 WL 3558173, at \*11; *Allstate*, 2011 WL 5067128, at \*11-13;  
3 *Progressive*, slip. op. at 3. Indeed, virtually identical arguments were rejected in  
4 *Allstate*. Like *Western & Southern* and *National Integrity*, Allstate claimed it could  
5 not have discovered the facts constituting its claims until its MBS were downgraded  
6 and certain loan-level analyses were conducted. *Allstate*, 2011 WL 5067128, at \*11.  
7 This Court rejected both arguments, finding that the plaintiffs were confusing facts  
8 with summaries and opinions. *Id.* at \*11-13. The gist of all of these MDL cases is  
9 that Countrywide allegedly “abandoned underwriting” and that this negatively  
10 affected the risk profile (and therefore the value) of Plaintiffs’ MBS. Under  
11 Plaintiffs’ own theory, those facts were known long ago, and Plaintiffs’ attempts to  
12 twist models, tools, and summaries into new facts is just a futile and improper  
13 attempt to delay the running of the limitations period *ad infinitum*.

14 **IV. ALL OF PLAINTIFFS’ STATE SECURITIES CLAIMS ARE**  
15 **TIME-BARRED AS TO MR. MOZILO**

16 Mr. Mozilo faces claims under two blue-sky statutes: (1) the Connecticut  
17 Uniform Securities Act (“CUSAs”) in *Putnam*; and (2) the Ohio Securities Act in  
18 *National Integrity* and *Western & Southern*. Both the Connecticut and Ohio  
19 blue-sky statutes are subject to a two-year statute of limitations. Conn. Gen. Stat.  
20 § 36b-29(f); *Keith v. Lighthouse Sec., Ltd.*, No. 5:92 CV 0185(GLG), 1997 WL  
21 380430, at \*6 (D. Conn. June 17, 1997) (“Claims brought pursuant to CUSA are  
22 governed by the statute of limitations set forth in the remedial provision of CUSA,  
23 § 36-498(a) (now § 36b-29).”); Ohio Rev. Code § 1707.43(B).

24 Under CUSA, the two-year limitations period runs from discovery of the  
25 alleged misrepresentation or from the date it should have been discovered in the  
26 exercise of reasonable diligence. Conn. Gen. Stat. § 36b-29(f). The two-year  
27 limitations period under the Ohio Securities Act likewise runs from the time the  
28 plaintiff “knew, or had reason to know” of the facts underlying its claims. Ohio

1 Rev. Code § 1707.43(B); *Kondrat v. Morris*, 118 Ohio App. 3d 198, 205 (Ohio Ct.  
2 App. 1997); *Loyd v. Huntington Bank*, No. 1:08 CV 2301, 2009 WL 1767585, at \*9  
3 (N.D. Ohio June 18, 2009) (“[C]onstructive notice is . . . sufficient to start the  
4 two-year period running under [the Ohio Securities Act].”); *Wyser-Pratte Mgmt. Co.*  
5 v. *Telxon Corp.*, 413 F.3d 553, 562-63 (6th Cir. 2005) (statute of limitations under  
6 the Ohio Securities Act triggered by inquiry notice).

7 Because a two-year statute of limitations applies, the claims against  
8 Mr. Mozilo under CUSA and the Ohio Securities Act are untimely for the same  
9 reasons that the federal securities claims against him are untimely. *See supra*  
10 Part III; *see also Harman v. Bench Sec. Corp.*, No. CV 950534266S, 1998 WL  
11 46691, at \*1-2 (Conn. Super. Ct. Jan. 22, 1998) (holding CUSA claim time-barred  
12 because the statute of limitations was triggered by a prior class action complaint);  
13 *Loyd*, 2009 WL 1767585, at \*10-11 & n.24 (holding claims time-barred because the  
14 limitations period under the Ohio Securities Act was triggered by, among other  
15 things, a prior class action lawsuit concerning “nearly identical” allegations).

16 The *National Integrity* and *Western & Southern* Plaintiffs claim their Ohio  
17 Securities Act claims are tolled under *Vaccariello v. Smith & Nephew*  
18 *Richards, Inc.*, 763 N.E.2d 160 (Ohio 2002). *See National Integrity* Compl. ¶ 388;  
19 *Western & Southern* Am. Compl. ¶ 388. However, tolling cannot apply to  
20 Mr. Mozilo because he was not a defendant in the MBS class action. *Wyser-Pratte*,  
21 413 F.3d at 567-68 (“[C]lass action tolling does not apply to a defendant not named  
22 in the class action complaint.”); *see also supra* note 4.

23 **V. PLAINTIFFS' CIVIL CONSPIRACY CLAIMS ARE TIME-BARRED**  
24 **AS TO MR. MOZILO**

25 Mr. Mozilo faces civil conspiracy claims in *National Integrity* and *Western &*  
26 *Southern*. Because *National Integrity* was transferred from the Southern District of  
27 New York pursuant to 28 U.S.C. Section 1407, New York law applies to the  
28 common-law claims in that case. *In re Nucorp Energy Sec. Litig.*, 772 F.2d 1486,

1 1491-92 (9th Cir. 1985). However, because National Integrity is an Ohio resident,  
2 New York's borrowing statute provides that National Integrity's claims must be  
3 timely under both New York and Ohio law. N.Y. C.P.L.R. 202.<sup>9</sup> Ohio's statute of  
4 limitations also applies to the civil conspiracy claim in *Western & Southern* because  
5 *Western & Southern* was transferred to this Court from the Southern District of  
6 Ohio. *In re Nucorp*, 772 F.2d at 1491-92.

7 Civil conspiracy is a derivative claim that requires a viable underlying cause  
8 of action. *Ford Motor Credit Co. v. Jones*, No. 92428, 2009 WL 1912626, at \*4  
9 (Ohio Ct. App. July 2, 2009). "Thus, the applicable statute of limitations for the  
10 underlying cause of action applies to the civil conspiracy charge." *Id.* Here, the  
11 underlying causes of action are based on federal, state, and common-law claims of  
12 securities fraud. *National Integrity* Compl. ¶ 496; *Western & Southern* Am. Compl.  
13 ¶ 496. Accordingly, the civil conspiracy claims are untimely to the extent the  
14 underlying securities fraud claims are untimely.

15 As discussed above, the underlying federal securities claims are time-barred  
16 by a two-year statute of limitations. *See supra* Part III. The underlying Ohio  
17 Securities Act claims are also time-barred by a two-year statute of limitations. *See*  
18 *supra* Part IV. The underlying common-law claims are time-barred as well. Under  
19 Ohio law, common-law claims "inextricably intertwined" with the sale of securities  
20 are subject to the Ohio Securities Act's two-year statute of limitations. *Loyd*, 2009  
21 WL 1767585, at \*8-9 (applying two-year limitations period to common-law fraud  
22 and civil conspiracy); *Hardin v. Reliance Trust Co.*, No. 1:04 CV 02079, 2006 WL  
23

24 <sup>9</sup> Under New York's borrowing statute, a cause of action by a non-New York  
25 resident must be timely under the limitations periods of both New York and the  
jurisdiction where the cause of action accrued. N.Y. C.P.L.R. 202. "When an injury  
26 is purely economic, the place of injury for purposes of the borrowing statute is  
where the economic impact of defendant's conduct is felt, which is usually the  
plaintiff's place of residence." *Gordon & Co. v. Ross*, 63 F. Supp. 2d 405, 408  
(S.D.N.Y. 1999); *see also McMahan & Co. v. Donaldson, Lufkin & Jenrette Sec.  
Corp.*, 727 F. Supp. 833, 834 (S.D.N.Y. 1989) (residency determined by principal  
place of business). As discussed in the Countrywide Defendants' Memorandum,  
National Integrity is a resident of Ohio. *See* Countrywide Defs' Mem. Part V.B.4.

1 2850455, at \*11 (N.D. Ohio Sept. 29, 2006) (applying two-year limitations period to  
2 civil conspiracy claim “shar[ing] the same factual basis” as Ohio Securities Act  
3 claim). There is no question that the common-law claims alleged here are  
4 “inextricably intertwined” with securities sales. Accordingly, the Ohio Securities  
5 Act’s two-year limitations period applies, and the common-law claims are  
6 time-barred for all the same reasons. Because the underlying causes of action are  
7 untimely, the civil conspiracy claims against Mr. Mozilo fail.

8 **VI. AMERICAN FIDELITY’S AIDING AND ABETTING FRAUD CLAIM**  
9 **IS TIME-BARRED AS TO MR. MOZILO**

10 Mr. Mozilo faces an aiding and abetting fraud claim in *American Fidelity*.  
11 Because *American Fidelity* was transferred from the Western District of Oklahoma,  
12 Oklahoma law applies to this claim. *In re Nucorp*, 772 F.2d at 1491-92. Oklahoma  
13 does not recognize a cause of action for aiding and abetting fraud. *Transp. Alliance*  
14 *Bank, Inc. v. Arrow Trucking Co.*, No. 10-CV-16-GKF-PJC, 2011 WL 221863, at \*5  
15 (N.D. Okla. Jan. 21, 2011) (“It does not appear that Oklahoma recognizes a cause of  
16 action for acquiescing in, or aiding and abetting, common law fraud.”); *Eastwood v.*  
17 *Nat'l Bank of Commerce*, 673 F. Supp. 1068, 1081 (W.D. Okla. 1987). This fact  
18 alone is fatal to American Fidelity’s claim against Mr. Mozilo.

19 Moreover, even if Oklahoma recognized a claim for aiding and abetting fraud,  
20 the claim would be time-barred because Oklahoma’s statute of limitations for  
21 fraud-based claims is two years from discovery. Okla. Stat. tit. 12, § 95(A)(3).<sup>10</sup>  
22 Under this discovery standard, “[f]raud is deemed to be discovered . . . when in the  
23

24 <sup>10</sup> Oklahoma has a borrowing statute that provides that “[t]he period of  
25 limitation applicable to a claim accruing outside of this state shall be that prescribed  
26 either by the law of the place where the claim accrued or by the law of this state,  
27 whichever last bars the claim.” Okla. Stat. tit. 12, § 105. Because the aiding and  
abetting claim against Mr. Mozilo necessarily accrued in either Oklahoma or  
California, the Court need not determine which state’s statute of limitations applies  
because the aiding and abetting claim is time-barred under both. *Stichting*, 2011  
WL 3558173, at \*12 (aiding and abetting fraud claim against Mr. Mozilo  
time-barred by California’s three-year statute of limitations).

1 exercise of reasonable diligence it could have been discovered.” *Gallaher v. Salem*,  
2 No. CIV-07-974-F, 2009 WL 2591669, at \*6 (W.D. Okla. Aug. 20, 2009) (quoting  
3 *Walker v. Walker*, 310 P.2d 760, 763 (Okla. 1957)). Thus, if Oklahoma recognized  
4 a cause of action for aiding and abetting fraud (which it does not), the aiding and  
5 abetting fraud claim against Mr. Mozilo would be untimely for the same reasons that  
6 the federal securities claims against him are untimely. *See supra* Part III.

7 **VII. SEALINK’S NEGLIGENT MISREPRESENTATION CLAIM IS**  
8 **TIME-BARRED AS TO MR. MOZILO**

9 Mr. Mozilo faces a negligent misrepresentation claim in *Sealink*. Because  
10 *Sealink* was transferred to this Court from the Southern District of New York, New  
11 York law applies. *In re Nucorp*, 772 F.2d at 1491-92. In New York, the statute of  
12 limitations for negligent misrepresentation is three years from the date of the alleged  
13 misstatement. N.Y. C.P.L.R. 214(4); *Ambassador v. Euclid*, No. 80 Civ. 1235  
14 (CBM), 1984 WL 341, at \*4 n.7 (S.D.N.Y. May 24, 1984); *Country World v.*  
15 *Imperial Frozen Foods Co.*, 589 N.Y.S.2d 81, 82 (N.Y. App. Div. 1992).

16 Here, the negligent misrepresentation claim against Mr. Mozilo is untimely.  
17 Although *Sealink* has not actually alleged that Mr. Mozilo made any misstatements,  
18 all of *Sealink*’s MBS purchases were made more than three years before the  
19 complaint was filed on September 29, 2011. *See Sealink Compl.* ¶ 2 (alleging MBS  
20 purchases took place between 2005 and 2007). Because any statements on which  
21 *Sealink* allegedly relied in making these purchases were necessarily made even  
22 earlier, the negligent misrepresentation claim against Mr. Mozilo is time-barred.

23 **VIII. THE STATE LAW CLAIMS AGAINST MR. MOZILO IN AMERICAN**  
24 **FIDELITY AND WESTERN & SOUTHERN FAIL FOR LACK OF**  
25 **PERSONAL JURISDICTION**

26 *American Fidelity* and *Western & Southern* were originally brought in  
27 Oklahoma and Ohio, respectively. They were then transferred to this Court as part  
28 of the MDL for pre-trial purposes only. Consequently, if the transferor courts did

1 not have personal jurisdiction over Mr. Mozilo, the cases must be dismissed. *In re*  
2 *Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 2005 WL 2988715, at  
3 \*2 (N.D. Cal. Nov. 7, 2005) (“In MDL actions such as this one, the court is entitled  
4 to exercise personal jurisdiction over each defendant only to the same degree that  
5 the original transferor court could have.”) (citing *Maricopa County v. Am. Petrofina,*  
6 *Inc.*, 322 F. Supp. 467, 469 (N.D. Cal. 1971)). As set forth more fully below,  
7 Mr. Mozilo had no contact with Oklahoma or Ohio at all, much less the contact  
8 required by the long-arm statutes and the United States Constitution.

9 Mr. Mozilo recognizes that the federal securities law claims have nationwide  
10 service of process provisions. However, because those claims are untimely as a  
11 matter of law (*see supra* Part III), they cannot form the basis for personal  
12 jurisdiction. *See Malone v. Nuber*, No. C07-2046RSL, 2009 WL 481285, at \*1  
13 (W.D. Wash. Feb. 23, 2009) (“[O]nce the federal claims were dismissed, they can  
14 no longer provide a basis for asserting pendent personal jurisdiction over defendants  
15 for the state law claims.”); *Morley v. Cohen*, 610 F. Supp. 798, 823 (D. Md. 1985)  
16 (same).<sup>11</sup> Consequently, the state law claims against Mr. Mozilo in *American*  
17 *Fidelity and Western & Southern* fail for lack of personal jurisdiction.

18 A. Plaintiffs Bear the Burden of Establishing Personal Jurisdiction

19 On a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the  
20 burden of demonstrating that the court has jurisdiction. *Harris Rutsky & Co. Ins.*

21 <sup>11</sup> See also *D'Addario v. Geller*, 264 F. Supp. 2d 367, 387-88 (E.D. Va. 2003)  
22 (where personal jurisdiction is based on a federal statutory nationwide service  
23 provision, “if the court were to later determine that the federal claim(s) should be  
24 dismissed against a defendant, the state claims against that defendant would also  
25 have to be dismissed, unless another basis for asserting personal jurisdiction  
exists”); *Auto Channel, Inc. v. Speedvision Network, LLC*, 995 F. Supp. 761, 762  
(W.D. Ky. 1997) (“Since all antitrust claims against Speedvision and Continental  
have been dismissed, this Court no longer has personal jurisdiction over the parties  
pursuant to the nationwide service of process provision set forth in 15 U.S.C.  
§ 22.”); *Bill Rea Ins. Assoc., Inc. v. Nat'l Fin. Servs. Corp.*, 860 F. Supp. 1181, 1184  
(W.D. Tex. 1994) (“Plaintiffs dropped their cause of action against National under  
the Federal Securities Act. Thus, the nationwide service of process provisions of the  
Securities Act were no longer applicable and traditional concepts of personal  
jurisdiction over the remaining state law claims were brought into play.”).

1      *Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1128-29 (9th Cir. 2003). Moreover,  
2 the Court need not assume the truth of allegations in a pleading that are contradicted  
3 by sworn affidavit. *Data Disc, Inc. v. Sys. Tech. Assoc., Inc.*, 557 F.2d 1280, 1284  
4 (9th Cir. 1977). In addition, the plaintiff must establish both that the forum state's  
5 long-arm statute authorizes jurisdiction *and* that the exercise of jurisdiction accords  
6 with constitutional principles of due process. *Ambar Mktg. Sys., Inc. v. Jobar Int'l,*  
7 *Inc.*, 551 F.2d 784, 787 (9th Cir. 1977). Western & Southern and American Fidelity  
8 have not alleged, nor can they establish, either with respect to Mr. Mozilo.

9      B.    The Long-Arm Statutes Do Not Authorize Jurisdiction

10     Oklahoma's long-arm statute is coextensive with Constitutional due process.  
11 *Kennedy v. Freeman*, 919 F.2d 126, 128 (10th Cir. 1990). As demonstrated in the  
12 following section, American Fidelity's complaint fails to satisfy Constitutional due  
13 process, and thus by definition, it fails to satisfy Oklahoma's long-arm statute.

14     Ohio's long-arm statute specifically enumerates the circumstances in which  
15 personal jurisdiction attaches.<sup>12</sup> Western & Southern alleges none of these statutory  
16 bases for jurisdiction in Ohio. For instance, Western & Southern does not and  
17 cannot allege that Mr. Mozilo transacted any business in Ohio, contracted to supply

18     <sup>12</sup> Ohio's long-arm statute authorizes jurisdiction under the following  
19 expressly enumerated circumstances: "(1) Transacting any business in this state;  
20 (2) Contracting to supply services or goods in this state; (3) Causing tortious injury  
21 by an act or omission in this state; (4) Causing tortious injury in this state by an act  
or omission outside this state if he regularly does or solicits business, or engages in  
any other persistent course of conduct, or derives substantial revenue from goods  
used or consumed or services rendered in this state; (5) Causing injury in this state  
to any person by breach of warranty expressly or impliedly made in the sale of  
goods outside this state when he might reasonably have expected such person to use,  
consume, or be affected by the goods in this state, provided that he also regularly  
does or solicits business, or engages in any other persistent course of conduct, or  
derives substantial revenue from goods used or consumed or services rendered in  
this state; (6) Causing tortious injury in this state to any person by an act outside this  
state committed with the purpose of injuring persons, when he might reasonably  
have expected that some person would be injured thereby in this state; (7) Causing  
tortious injury to any person by a criminal act, any element of which takes place in  
this state, which he commits or in the commission of which he is guilty of  
complicity; (8) Having an interest in, using, or possessing real property in this state;  
or (9) Contracting to insure any person, property, or risk located within this state at  
the time of contracting." Ohio Rev. Code § 2307.382.

1 goods in Ohio, owns any property in Ohio, or insured anyone in Ohio. Nor does  
2 Western & Southern allege that Mr. Mozilo acted with the specific purpose of  
3 injuring Plaintiffs in Ohio, engaged in any persistent course of conduct directed at  
4 Ohio, or personally derived substantial revenue from goods used or services  
5 rendered in Ohio. Indeed, Western & Southern alleges no contact by Mr. Mozilo  
6 with Ohio at all, because there was none. Mr. Mozilo is a resident of California. He  
7 does not own property in Ohio. He does not pay taxes in Ohio and has not even  
8 visited the state since 2002. Mozilo Decl. ¶¶ 2-3. He did not engage personally in  
9 any business, hold a business license, or maintain an office in Ohio. *Id.* ¶¶ 4-5, 7.  
10 Under these circumstances, the *Western & Southern* amended complaint fails the  
11 personal jurisdiction test of Ohio's long-arm statute. *Hoover Co. v. Robeson Indus.*  
12 Corp.

13 , 904 F. Supp. 671, 674 (N.D. Ohio 1995) ("The nonresident defendant must  
do some act or consummate some transaction within the forum.").<sup>13</sup>

14 Indeed, the only actions Mr. Mozilo is alleged to have taken were in his  
15 capacity as an officer of CFC. See *Am. Fidelity Am. Compl.* ¶ 27 (actions by  
16 officers were committed "while those individuals were acting within the actual or  
17 implied scope of their authority"); *Western & Southern Am. Compl.* ¶ 44 (same).  
18 These actions are barred by the "fiduciary shield" doctrine from serving as a basis  
19

20 <sup>13</sup> Western & Southern asserts a new "conspiracy" claim against Mr. Mozilo  
21 under the Ohio Corrupt Activities Act, which was not asserted in Western &  
22 Southern's previous complaint. Although the Ohio Corrupt Activities Act contains  
23 a provision relating to personal jurisdiction, Ohio Rev. Code § 2923.34(K), a state  
24 statute cannot extend personal jurisdiction beyond the reach of the United States  
25 Constitution. See, e.g., *MFS Series Trust III ex rel. MFS Mun. High Income Fund v.*  
26 *Grainger*, 96 P.3d 927, 933 (Utah 2004) ("Permitting allegations of liability under  
Utah's securities laws to automatically give rise to personal jurisdiction, without  
first considering whether each defendant 'purposefully availed' himself of the  
benefits and protections of Utah's laws, would be to ignore the due process  
requirements of the fourteenth amendment.") (citing *Int'l Shoe v. Washington*, 326  
U.S. 310, 316 (1945)); see also *Irizarry v. East Longitude Trading Co., Ltd.*, 296 F.  
Supp. 2d 862, 866-67 (N.D. Ohio 2003) (no personal jurisdiction under Constitution  
despite meeting Ohio's long-arm statute); *Costaras v. NBC Universal, Inc.*, 409 F.  
Supp. 2d 897, 905 (N.D. Ohio 2005) (same). As demonstrated in the following  
section, Constitutional due process precludes Western & Southern's complaint  
against Mr. Mozilo, including the new Ohio Corrupt Activities Act claim.

1 for personal jurisdiction. Under both Ohio and Oklahoma law, the fiduciary shield  
2 doctrine bars jurisdiction over corporate officers based solely on acts carried out in  
3 their normal corporate capacities. *See Franklin Prod., Inc. v. Gen. Nutrition Corp.*,  
4 No. 2:05-cv-1061, 2007 WL 2462665, at \*3 (S.D. Ohio Aug. 27, 2007) (“The  
5 fiduciary shield doctrine generally prevents the exercise of personal jurisdiction over  
6 a corporate officer whenever an out-of-state officer’s contacts with the forum state  
7 occur by virtue of his or her acts as a fiduciary.”); *Hnath v. Hereford*, 757 F. Supp.  
8 2d 1130, 1136 (N.D. Okla. 2010) (“Under the fiduciary shield doctrine, exercise of  
9 personal jurisdiction over an individual may not be based solely on acts the  
10 individual performed in a purely representative capacity.”).

11       C. Constitutional Due Process Does Not Authorize Jurisdiction

12       In determining whether the requirements of federal due process are met, the  
13 Court should apply its own circuit’s law. *In re Dynamic*, 2005 WL 2988715, at \*2.  
14 For a court to exercise personal jurisdiction over a nonresident defendant consistent  
15 with due process, that defendant must have “certain minimum contacts” with the  
16 relevant forum “such that the maintenance of the suit does not offend ‘traditional  
17 notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S.  
18 310, 316 (1945); *SEC v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007).

19       Jurisdiction over a nonresident defendant may be “general” or “specific.”  
20 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-15 (1984).  
21 General personal jurisdiction exists where the defendant’s contacts with the forum  
22 state are substantial, “continuous and systematic,” irrespective of whether the  
23 transaction at issue in the case arose from contacts with the forum state. *Id.* at  
24 416 & n.9. Specific personal jurisdiction may be asserted only where the claim  
25 itself – here, alleged fraud in the sale of MBS – arises from the defendant’s contacts  
26 with the forum state. *Id.*

27       As to Mr. Mozilo, jurisdiction in *American Fidelity and Western & Southern*  
28 fails under both tests.

1           1. Mr. Mozilo's Contacts Must Be Analyzed Separately from  
2           Countrywide Financial Corporation's Contacts

3           Due process requires that “[e]ach defendant’s contacts with the forum State  
4 must be assessed individually.” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770,  
5 781 n.13 (1984); *see also Brown v. Gen. Steel Domestic Sales, LLC*, No. 08-cv-  
6 00779 MMM (SHX), 2008 WL 2128057, at \*10 (C.D. Cal. May 19, 2008) (“The  
7 fact that a corporation is subject to jurisdiction in the forum state, however, does not  
8 necessarily confer jurisdiction over its individual officers. Instead, the court must  
9 examine the individual’s contacts with the forum to determine if they are sufficient  
10 to warrant the exercise of jurisdiction over him in connection with forum-related  
11 claims.”). This means that Mr. Mozilo’s former status as the CEO of CFC is  
12 insufficient to subject him to this Court’s jurisdiction. As the Supreme Court has  
13 emphasized, “jurisdiction over an employee does not automatically follow from  
14 jurisdiction over the corporation which employs him; nor does jurisdiction over a  
15 parent corporation automatically establish jurisdiction over a wholly owned  
16 subsidiary.” *Keeton*, 465 U.S. at 781 n.13.

17           Consequently, CFC’s contacts with Ohio and Oklahoma (assuming that the  
18 corporation had sufficient contacts) cannot be imputed to Mr. Mozilo. Only  
19 Mr. Mozilo’s own, personal actions can subject him to personal jurisdiction in  
20 Oklahoma or Ohio. As demonstrated herein, Mr. Mozilo had no contact at all with  
21 Oklahoma or Ohio, much less the heightened contact required by due process for  
22 personal jurisdiction to attach.

23           2. Mr. Mozilo Is Not Subject to General Jurisdiction

24           General jurisdiction cannot be asserted here because Mr. Mozilo did not have  
25 substantial, “continuous and systematic” contacts with Oklahoma or Ohio.  
26 *Helicopteros*, 466 U.S. at 416 & n.9. The complaints allege no relationship between  
27 Mr. Mozilo and Oklahoma or Ohio at all; nor could they. Mr. Mozilo is a California  
28 resident. Mozilo Decl. ¶ 2. He owns no property in Oklahoma or Ohio. *Id.* ¶ 3. He

1 does not maintain any ongoing contact with Oklahoma or Ohio and did not  
2 personally conduct business in Oklahoma or Ohio during the relevant time period.

3 *Id.* ¶ 4. In fact, Mr. Mozilo did not enter either Oklahoma or Ohio at all during the  
4 time period in which the MBS at issue were securitized and sold. *Id.* ¶ 5. In short,  
5 Mr. Mozilo had no contact with the forum states at all, let alone the substantial,  
6 “continuous and systematic” contacts necessary for general jurisdiction to apply.

7 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004).

8           3.     Mr. Mozilo Is Not Subject to Specific Jurisdiction

9       The Ninth Circuit has adopted a three-part test to determine whether specific  
10 jurisdiction exists over a defendant: (1) the non-resident defendant must  
11 purposefully direct his activities or consummate some transaction with the forum or  
12 resident thereof; or perform some act by which he purposefully avails himself of the  
13 privilege of conducting activities in the forum, thereby invoking the benefits and  
14 protections of its laws; (2) the claim must be one which arises out of or relates to the  
15 defendant’s forum-related activities; and (3) the exercise of jurisdiction must  
16 comport with fair play and substantial justice, *i.e.* it must be reasonable.

17 *Schwarzenegger*, 374 F.3d at 802. Plaintiffs fail to meet every prong of this test.

18           a.     No Purposeful Availment/Direction

19       Purposeful availment and purposeful direction are distinct concepts, with  
20 purposeful availment used in “suits sounding in contract” and purposeful direction  
21 used in “suits sounding in tort.” *Schwarzenegger*, 374 F.3d at 802. Plaintiffs’  
22 claims sound in tort, and Plaintiffs cannot show that Mr. Mozilo purposefully  
23 directed actions at either Ohio or Oklahoma.<sup>14</sup>

24       <sup>14</sup> Plaintiffs cannot satisfy the purposeful availment test either. They allege  
25 no action by Mr. Mozilo that took place within Oklahoma or Ohio; therefore they  
26 have not alleged that he purposefully availed himself of the privileges of conducting  
27 activities there. *See Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1156 (9th Cir.  
28 2006) (where “[a]ll of [the defendant’s] action identified by [the plaintiff] is action  
taking place outside the forum,” there is no purposeful availment). The *American  
Fidelity* plaintiffs make the boilerplate allegation that the defendants “transact  
business” in this district: *Am. Fidelity Am. Compl.* ¶ 30. Not only does this  
allegation impermissibly lump Mr. Mozilo with the other defendants, but it is clearly

Purposeful direction requires: (1) the defendant committed an intentional act; (2) expressly aimed at the forum state; (3) causing harm that the defendant knows is likely to be suffered in the forum state. *Schwarzenegger*, 374 F.3d at 805 (citation omitted). To find that the defendant “expressly aimed” his conduct at the forum state, a plaintiff must allege that the defendant did “something more than commit a foreign act with foreseeable effects in the forum state” – for instance by showing “individualized targeting” of residents in the forum state. *Pebble Beach*, 453 F.3d at 1157 (internal quotations and citation omitted); *Alsop v. Carolina Custom Products, Inc.*, No. EDCV 07-212-VAP, 2007 WL 2441025, at \*7 (C.D. Cal. Jun. 29, 2007) (“[D]efendant must ‘individually target’ the forum state rather than just commit an act that has foreseeable effects in the forum state.”). This standard is a high standard, and generalized incantations of directing corporate activity will not suffice. *Ind. Plumbing Supply, Inc. v. Sd. of Lynn, Inc.*, 880 F. Supp. 743, 751 (C.D. Cal. 1995) (corporate officer’s authorization of infringing advertisements published in forum state was insufficient to establish special personal jurisdiction). Here, Plaintiffs have come nowhere close to meeting their burden of showing that Mr. Mozilo individually targeted Ohio or Oklahoma in any way.

In *American Fidelity*, Plaintiffs make the boilerplate allegation that “Defendants are also subject to personal jurisdiction in in this district.” *Am. Fidelity Am. Compl.* ¶ 30. However, Plaintiffs do not allege even one specific action by Mr. Mozilo expressly aimed at Oklahoma, and boilerplate allegations are not sufficient in light of Mr. Mozilo’s declaration denying contacts with Oklahoma. See *Data Disc*, 557 F.2d at 1284 (conclusory personal jurisdiction allegations fail against declaration). In *Western & Southern*, Plaintiffs make no specific allegations

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contradicted by Mr. Mozilo’s declaration. See Mozilo Decl. ¶¶ 4-5; *Keeton*, 465 U.S. at 781 n.13 (group personal jurisdiction allegations are improper); *Data Disc*, 557 F.2d at 1284 (conclusory personal jurisdiction allegations fail against declaration).

1 regarding the basis for personal jurisdiction over Mr. Mozilo, aside from the  
2 nationwide service of process under federal securities law.

3 Neither set of Plaintiffs allege any facts showing that Mr. Mozilo took any  
4 part in the core allegation of fraud here – *fraud in the sale of MBS*. Mr. Mozilo was  
5 the CEO of a parent company which, with its subsidiaries, employed over 50,000  
6 people. Mozilo Decl. ¶ 8. He was not an officer or director of any of the  
7 subsidiaries that sold or securitized the MBS at issue in this case. *Id.* ¶ 9.  
8 Moreover, there is no allegation that Mr. Mozilo even read the MBS offering  
9 documents, much less that he knew they were false and disseminated them to Ohio  
10 or Oklahoma intending to harm residents there. *Cf. Allstate*, 2011 WL 5067128, at  
11 \*20-21 (differentiating allegations regarding underwriting from allegations  
12 regarding the allegedly fraudulent sale of MBS).

13 Plaintiffs cannot overcome these deficiencies by arguing that allegations that  
14 Mr. Mozilo “controlled” the operations of CFC and its subsidiaries are sufficient to  
15 establish personal jurisdiction. *See, e.g., Am. Fidelity Am. Compl.* ¶¶ 286-99;  
16 *Western & Southern Am. Compl.* ¶¶ 305-17. “Control” allegations are not sufficient  
17 to show that Mr. Mozilo personally directed activities towards Oklahoma or Ohio.  
18 *See Toyz, Inc. v. Wireless Toyz, Inc.*, No. C 09-05091 JF (HRL), 2010 WL 334475,  
19 at \*7 (N.D. Cal. Jan. 25, 2010) (“Because plaintiffs do not allege an alter ego theory,  
20 the Court must determine if the Individual Defendants played a primary role in the  
21 alleged wrongdoing intentionally directed at Plaintiffs in [the forum].”). In *Toyz*,  
22 the court held that the vague, blanket allegation of the individual defendants’  
23 supposed control “does not establish purposeful direction.” *Id.* at \*8.

24 Indeed, courts throughout the United States repeatedly have refused to find  
25 personal jurisdiction over former officers of Countrywide entities based upon naked  
26 assertions (just like the assertions of Plaintiffs here) that those officers controlled  
27 Countrywide – uniformly finding that such allegations fail to meet due process  
28 requirements. *Office of the Att'y Gen. v. Mozilo*, No. 08-30105 (19) (Fl. Cir. Ct.

1 June 6, 2011) (order granting motion to dismiss), RJN ¶ 3, Ex. 3 (dismissing for lack  
2 of personal jurisdiction a Florida Attorney General action against Mr. Mozilo based  
3 on allegedly improper lending by Countrywide); *People v. Countrywide Fin. Corp.*,  
4 No. 08CH22994 (Ill. Cir. Ct. Jun. 24, 2010) (order granting motion to dismiss), RJN  
5 ¶ 4, Ex. 4 (dismissing for lack of personal jurisdiction an Illinois Attorney General  
6 action against Mr. Mozilo based on allegedly improper lending by Countrywide);  
7 *New Mexico State Inv. Council v. Countrywide Fin. Corp.*, No. D-0101-CV-2008-  
8 02289 (N.M. Dist. Ct. Apr. 14, 2009) (order granting motions to dismiss), RJN ¶ 5,  
9 Ex. 5 (dismissing for lack of personal jurisdiction a fraud claim brought by a  
10 purchaser of MBS against several former officers of Countrywide entities).<sup>15</sup> For  
11 personal jurisdiction to be properly asserted over Mr. Mozilo, he must have had  
12 *personal* contact with Oklahoma and Ohio, which he did not.

13 *New Mexico* is particularly instructive. In *New Mexico*, like this case, the  
14 plaintiffs sued several Countrywide entities and their former officers, alleging that  
15 they made false and misleading statements relating to the sale of MBS. Plaintiffs  
16 argued that the *New Mexico* court could assert personal jurisdiction over the  
17 individual defendants because the MBS sales activities were directed nationwide  
18 and because those individual defendants (not including Mr. Mozilo) signed the MBS  
19 offering documents at issue in that case. The court flatly rejected the argument,  
20 holding that the minimum contacts test and Constitutional due process require more.  
21 *Id.*; *New Mexico* Hr'g Tr., Mar. 6, 2009 (incorporated into Court's Apr. 14, 2009  
22 Order), RJN ¶ 6, Ex. 6 at 278-280.

23 The case for dismissal is even stronger here because, unlike the individual  
24 defendants dismissed in *New Mexico*, Mr. Mozilo did not even sign the offering  
25 documents at issue, nor was he an officer, director, or employee of any of the  
26 companies that sold the MBS.

27 \_\_\_\_\_  
28 <sup>15</sup> The Illinois Attorney General did not appeal the dismissal, and the Florida  
decision is currently on appeal.

1                   **b.     *Claims Do Not Arise From Contact***

2       The Ninth Circuit has adopted a “but for” test to determine whether a  
3 plaintiff’s claim arises out of a defendant’s forum-related contacts. *Glencore Grain*  
4 *Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir.  
5 2002). Under this test, Plaintiffs must demonstrate that “but for” Mr. Mozilo’s  
6 contacts with the forum states, Plaintiffs’ claims would not have arisen. *Id.*  
7 Plaintiffs cannot meet this test. They have not alleged any contact by Mr. Mozilo  
8 with the forum states but for which they would not have been injured. Indeed, they  
9 have not alleged any contact at all. *See In re Dynamic*, 2005 WL 2988715, at \*9 (if  
10 there are no minimum contacts at all, then by definition the “arising out of”  
11 requirement is not met). Moreover, Plaintiffs’ claims arise from the sale of MBS.  
12 Because Mr. Mozilo had no involvement in the sale of MBS to Plaintiffs (*see*  
13 Mozilo Decl. ¶ 9), Plaintiffs cannot show that their claims arise from his contacts.

14                   **c.     *Exercise of Jurisdiction Not Reasonable***

15       Because Plaintiffs cannot satisfy either of the first two requirements for  
16 personal jurisdiction, the Court need not even reach this requirement. However, an  
17 independent reason to dismiss the remaining state law claims for lack of personal  
18 jurisdiction is that jurisdiction is not reasonable as to Mr. Mozilo. Personal  
19 jurisdiction is appropriate only where summoning a defendant “does not offend  
20 ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe*, 326 U.S. at 316  
21 (citations omitted). Haling Mr. Mozilo into an Oklahoma or Ohio court over MBS  
22 sales he had nothing to do with fails this common sense test. The reasonableness  
23 determination requires consideration of a number of factors: (1) the extent of the  
24 defendant’s purposeful interjection into the forum state; (2) the burden on the  
25 defendant in defending in the forum; (3) the extent of the conflict with the  
26 sovereignty of the defendant’s state; (4) the forum state’s interest in adjudicating the  
27 dispute; (5) the most efficient judicial resolution of the controversy; (6) the  
28 importance of the forum to the plaintiff’s interest in convenient and effective relief;

1 and (7) the existence of an alternative forum. *Glencore Grain*, 284 F.3d at 1125.  
2 Here, the factors weigh heavily in Mr. Mozilo's favor. Mr. Mozilo had no contact at  
3 all with Plaintiffs or their states. He had nothing to do with the sale of MBS to  
4 Plaintiffs. Consequently, no legitimate interest would be served in forcing  
5 Mr. Mozilo to defend himself in a trial in Ohio or Oklahoma.

6 **IX. CONCLUSION**

7 For the aforementioned reasons, Mr. Mozilo respectfully requests that the  
8 Court dismiss the Complaints against him with prejudice.<sup>16</sup>

10 Dated: December 7, 2011

Respectfully submitted,

11 IRELL & MANELLA LLP

13 By: David Siegel 12/22  
14 David Siegel  
15 Attorneys for Defendant  
Angelo Mozilo

16 The only claims against Mr. Mozilo not addressed herein are Claim No. 3  
in *Sealink* for aiding and abetting fraud and Claim No. 6 in *National Integrity* for  
violation of the Ohio Corrupt Activities Act. Those claims should be dismissed with  
prejudice for the reasons set forth in the Countrywide Defendants Memorandum,  
which Mr. Mozilo joins in and incorporates by reference. See Countrywide Defs'  
Mem. Parts V.A & VIII.

## Appendix A:

## Statutes of Limitations for Claims Against Mr. Mozilo

*American Fidelity Assurance Co. v. Countrywide Financial Corp.,  
No. 11-cv-07167 MRP (MANx) (C.D. Cal. Apr. 11, 2011)*

Claim	Limitations Period	Trigger of Limitations Period
Section 15 of the Securities Act of 1933	One year. 15 U.S.C. § 77m.	Discovery of the alleged misstatement “or after such discovery should have been made by the exercise of reasonable diligence.” 15 U.S.C. § 77m.
Aiding and Abetting Fraud	Two years. Okla. Stat. tit. 12, § 95(A)(3). <sup>1</sup>	Discovery of the alleged fraud or, when in the exercise of reasonable diligence, it could have been discovered. <i>Gallaher v. Salem</i> , 2009 WL 2591669, at *6 (W.D. Okla. Aug. 20, 2009).

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<sup>1</sup> Although Oklahoma does not recognize a cause of action for aiding and abetting fraud, fraud-based claims are subject to a two-year limitations period.

Appendix A:  
Statutes of Limitations for Claims Against Mr. Mozilo

**National Integrity Life Insurance Co. v. Countrywide Financial Corp.,  
No. 11-cv-09889 MRP (MANx) (C.D. Cal. Nov. 9, 2011)**

Claim	Limitations Period	Trigger of Limitations Period
Section 20(a) of the Securities Exchange Act of 1934.	Two years. 28 U.S.C. § 1658(b)(1).	When the plaintiff discovers or reasonably could have discovered the facts constituting the violation. <i>Merck &amp; Co. v. Reynolds</i> , 130 S. Ct. 1784, 1796 (2010).
Ohio Securities Act	Two years. Ohio Rev. Code § 1707.43(B).	When the plaintiff “knew, or had reason to know” of the facts underlying its claims. Ohio Rev. Code § 1707.43(B).
Civil Conspiracy	Two years (based on the statute of limitations for the underlying federal, state, and common-law securities fraud claims). <i>Ford Motor Credit Co. v. Jones</i> , 2009 WL 1912626, at *4 (Ohio Ct. App. July 2, 2009).	When the plaintiff discovers or reasonably could have discovered the facts constituting the violation. <i>Merck &amp; Co. v. Reynolds</i> , 130 S. Ct. 1784, 1796 (2010).  When the plaintiff “knew, or had reason to know” of the facts underlying its claims. Ohio Rev. Code § 1707.43(B).

Appendix A:  
Statutes of Limitations for Claims Against Mr. Mozilo

***Putnam Bank v. Countrywide Financial Corp.,  
No. 11-cv-04698 MRP (MANx) (C.D. Cal. Jan. 27, 2011)***

Claim	Limitations Period	Trigger of Limitations Period
Section 20(a) of the Securities Exchange Act of 1934	Two years. 28 U.S.C. § 1658(b)(1).	When the plaintiff discovers or reasonably could have discovered the facts constituting the violation. <i>Merck &amp; Co. v. Reynolds</i> , 130 S. Ct. 1784, 1796 (2010).
Connecticut Uniform Securities Act	Two years. Conn. Gen. Stat. § 36b-29(f).	When the plaintiff discovers or should have discovered the alleged misrepresentation in the exercise of reasonable diligence. Conn. Gen. Stat. § 36b-29(f).

Appendix A:  
Statutes of Limitations for Claims Against Mr. Mozilo

***Sealink Funding Ltd. v. Countrywide Financial Corp.,  
No. 11-cv-08898 MRP (MANx) (C.D. Cal. Sept. 29, 2011)***

Claim	Limitations Period	Trigger of Limitations Period
Negligent Misrepresentation	Three years. N.Y. C.P.L.R. 214(4).	Date of the alleged misstatement. <i>Ambassador v. Euclid</i> , 1984 WL 341, at *4 n.7 (S.D.N.Y. May 24, 1984).
Aiding and Abetting Fraud <sup>2</sup>	Three years. BGB § 195.	The end of the year in which the claim accrues, which is when plaintiff (i) gained knowledge of the circumstances and party giving rise to the claim; or (ii) would have acquired such knowledge but for its own gross negligence. BGB § 199.

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<sup>2</sup> The aiding and abetting fraud claim against Mr. Mozilo in *Sealink* is time-barred for the reasons set forth in the Countrywide Defendants Memorandum, which Mr. Mozilo joins in and incorporates by reference. See Countrywide Defs' Mem. ISO Mot. to Dismiss Part VIII.B.

Appendix A:  
Statutes of Limitations for Claims Against Mr. Mozilo

***Western and Southern Life Insurance Co. v. Countrywide Financial Corp.,  
No. 11-cv-07166 MRP (MANx) (C.D. Cal. April 27, 2011)***

Claim	Limitations Period	Trigger of Limitations Period
Section 20(a) of the Securities Exchange Act of 1934	Two years. 28 U.S.C. § 1658(b)(1).	When the plaintiff discovers or reasonably could have discovered the facts constituting the violation. <i>Merck &amp; Co. v. Reynolds</i> , 130 S. Ct. 1784, 1796 (2010).
Ohio Securities Act	Two years. Ohio Rev. Code § 1707.43(B).	When the plaintiff “knew, or had reason to know” of the facts underlying its claims. Ohio Rev. Code § 1707.43(B).
Civil Conspiracy	Two years (based on the statute of limitations for the underlying federal, state, and common-law securities fraud claims). <i>Ford Motor Credit Co. v. Jones</i> , 2009 WL 1912626, at *4 (Ohio Ct. App. July 2, 2009).	When the plaintiff discovers or reasonably could have discovered the facts constituting the violation. <i>Merck &amp; Co. v. Reynolds</i> , 130 S. Ct. 1784, 1796 (2010).  When the plaintiff “knew, or had reason to know” of the facts underlying its claims. Ohio Rev. Code § 1707.43(B).

**Appendix B:**  
**Allegations that Countrywide Abandoned Underwriting Guidelines**

<u>Case</u>	<u>Examples of Abandoned Underwriting Allegations</u>
<b>American Fidelity</b>	<p>Countrywide “systematically [] ignore[d] the underwriting standards it touted.” Am. Compl. ¶ 2.</p> <p>“In order to meet its volume and market share goals, Countrywide abandoned any semblance of underwriting standards.” Am. Compl. ¶ 49.</p> <p>“As the evidence shows, Countrywide’s abandonment of its underwriting guidelines was systemic.” Am. Compl. ¶ 94.</p>
<b>National Integrity</b>	<p>“Countrywide abandoned all semblance of underwriting guidelines, regularly originating or purchasing loans issued to borrowers regardless of ability to repay or collateral value.” Compl. ¶ 10.</p> <p>Countrywide “disregard[ed] [ ] its own underwriting guidelines in favor of blindly approving nearly any kind of loan.” Compl. ¶ 65.</p> <p>Countrywide “systematically abus[ed] the ‘exceptions’ process in order to further circumvent its purported underwriting standards.” Compl. ¶ 84.</p>
<b>Putnam</b>	<p>Countrywide failed to disclose that it “systematically disregard[ed] the mortgage loan underwriting guidelines that [were] stated in the Certificates’ Offering Documents.” Compl. ¶ 5.</p> <p>“[I]n order to meet its volume and market share goals, Countrywide’s underwriting practices abandoned any semblance of the standards set forth in the Offering Documents.” Compl. ¶ 53.</p> <p>“The systematic abandonment of any underwriting standards rendered . . . [the] representations [in the Offering Documents] false or misleading at the time they were made. Countrywide systematically abandoned its underwriting standards to increase loan volumes without regard to loan quality.” Compl. ¶ 59.</p>

**Appendix B:**  
**Allegations that Countrywide Abandoned Underwriting Guidelines**

Case	Examples of Abandoned Underwriting Allegations
<i>Sealink</i>	<p>“Countrywide ‘developed a systematic pattern and practice of abandoning its own guidelines for loan origination and underwriting . . .’” Compl. ¶ 82.</p> <p>“Attorneys General from various states have investigated Countrywide’s lending practices and charged that Countrywide systematically departed from the underwriting standards it professed to use for originating residential loans, including those loans originated by Countrywide Home.” Compl. ¶ 84.</p>
<i>Western &amp; Southern</i>	<p>“Countrywide abandoned all semblance of underwriting guidelines, regularly originating or purchasing loans issued to borrowers regardless of ability to repay or collateral value.” Am. Compl. ¶ 10.</p> <p>Countrywide “disregard[ed] [ ] its own underwriting guidelines in favor of blindly approving nearly any kind of loan.” Am. Compl. ¶ 65.</p> <p>Countrywide “systematically abus[ed] the ‘exceptions’ process in order to further circumvent its purported underwriting standards.” Am. Compl. ¶ 84.</p>